



ON - THE - JOB

Sherrie M. Hayashi, Editor-in-Chief

ROBYN B. BARKDULL, Editor

Commissioner's Corner.....

Promoting safety and fairness... The Utah Labor Commission

Utah is an industrious state. After all, we are the "Beehive State." As Utahns, we want to provide a high quality of life for ourselves and our families. We value our work ethic. We take pride in our work. We also believe our workplaces should be safe and fair. We want our family members to come home safe and sound from a hard day's work. The Utah Labor Commission plays a pivotal role in assuring the safety and fairness of Utah's workplaces.

It has been my privilege over the last few months, as the newly appointed Commissioner, to become more familiar with the mission of each of our diverse divisions and better acquainted with the hard-working people who carry out those responsibilities each day. It may be a cliché, but as any good human resource representative or manager knows, an employer's most valuable resource is its employees. Philosophically, we know this, but in our busy day-to-day existence of hearing workers' compensation claims, mediating employment discrimination cases, and inspecting workplaces, we often forget this essential guiding principle.

As other agencies, the Labor Commission has been involved in the strategic planning process of identifying, developing, and implementing five major objectives for our agency: 1) Workplace Safety and Fairness; 2) Quality Constituent Service; 3) Efficiency; 4) Competent and Dedicated staff; and 5) Financial Accountability. However, as part of this process, nothing has become as abundantly clear as the fact that having competent and dedicated staff is the key essential element in our ability to meet all of our goals and objectives.

Workplace Safety and Fairness:

We must supply our staff with the necessary technical knowledge, by providing sufficient training and effective communication of policies and procedures. Our Staff must have these tools in order to credibly carry out the Labor Commission's regulatory responsibilities of assuring that Utah worksites are safe and fair.



Quality Constituent Services: In order to earn the respect of the employees, employers, community groups, professional associations, and the general public, the Commission must put forth the highest quality work product possible. Again, this emphasizes the need to provide our staff with the training and tools necessary to do their job. Professionalism in the manner in which we do our job and the fact we apply our regulatory responsibilities in a fair, timely and correct manner,

Continued on page 8

Inside.....

<i>Sexual Harassment</i>	<i>.....2</i>
<i>State/City cooperation in elevator training</i>	<i>...3</i>
<i>SHARP Awards 2006</i>	<i>.....4</i>
<i>UALD Investigators earn national status</i>	<i>...5</i>
<i>Appellate Board Decisions</i>	<i>.....6</i>
<i>The Rules Corner</i>	<i>.....7</i>

Sexual Harassment in the workplace is against the law!

By Heather Morrison – Director, Utah Antidiscrimination and Labor Division

Maybe she should have known better than to have accepted a position with the company. In the initial interview, the male supervisor told her the only way she would get the job was if she agreed to jump out of a cake naked. Maybe she should have quit when she read the company's sexual harassment policy, and all it said was "employees should use their best judgment, but not do anything to interfere with anyone's creativity." She did neither, however, because she was young, naïve and needed her job. As the days went on, she was subjected to an increasing barrage of offensive language and name-calling, pornographic computer displays, and sexual touching. She felt trapped and powerless.

"Although that mediation was initially unsuccessful, it provided her with the valuable opportunity of opening discussion with the Company and the parties were able to amicably settle their dispute a few weeks later."

Finally late one night after nearly being raped by her supervisor, she quit. With nowhere else to go, she turned to the Utah Antidiscrimination and Labor Division (UALD) of the Utah Labor Commission for help. She contacted the Division, filled out a simple form, and then met with an intake officer who helped her file a Charge of Discrimination. Within a few weeks, the Division conducted a mediation which she and a representative of the company attended. Although that mediation was initially unsuccessful, it provided her with the valuable opportunity of opening discussion with the company and the parties were able to amicably settle their dispute a few weeks later. The company agreed to implement an effective complaint procedure and employee training. It also issued her an apology and agreed to pay her an undisclosed amount of money as



compensation.

There is no place for sexual harassment in the workplace. In fact, it is against the law. The Utah Antidiscrimination and Labor Division is the state agency that mediates (for early resolution), investigates, and resolves charges of employment discrimination, including sexual harassment.

UALD is also a resource for employees and employers on the laws that prohibit employment discrimination. The Division also is available to conduct presentations on a wide variety of topics such as sexual harassment training, preventative measures, and diversity training.

In addition, the Division investigates and resolves housing discrimination complaints and enforces Utah's minimum wage, wage payment requirements, and laws which protect youth in employment. Annually, the Division receives approximately 1,000 employment discrimination complaints (about 150 of those deal with sexual harassment), 60 housing discrimination complaints, and 1700 wage complaints.

For information regarding sexual harassment training, employment discrimination, or other information, contact UALD at (801) 530-6801 or visit the Labor Commission website at www.laborcommission.utah.gov

Commission to assist in elevator training for Park City Building Department

By Ami Johnston, Boiler and Elevator Safety Division



The Division of Boiler and Elevator Safety has agreed to a special training request initiated by the Park City Building Department. Richard Carlile, Building Inspection Supervisor with the Park City Building Department, contacted the Division to request training on the installation and inspection of residential elevators in the Park City area. Carlile asked the Division to provide several hours of training to help Park City building officials become better trained in the installation and operation of elevators and man lifts.

The Labor Commission's Elevator Section of the Boiler & Elevator Safety Division has jurisdiction over all commercial elevators and escalators which includes performing acceptance and periodic inspections of all equipment, hoistways, machinery spaces, and life safety devices. Although the Elevator Section does not inspect residential elevators, Commission inspectors are very familiar with the residential section of the American Society of Mechanical Engineers (ASME) A17.1 code. On occasion, the Elevator Section will receive a special request for an inspection of this type, and as a public

service our inspectors will perform the inspection, but do not issue a Certificate of Inspection and Permit to Operate.

The Utah Labor Commission is the state agency whose responsibility includes assuring the safety and fairness of Utah's workplaces. The Boiler and Elevator Safety Division ensures public and employee safety by inspecting boilers, pressure vessels, and elevators. Elevators, escalators, boilers and pressure vessels are essential to modern life, but can cause catastrophe if improperly designed, installed or maintained. Although inspection of private, residential elevators is outside the scope of the Commission's authority, we welcome the opportunity to provide training and lend our expertise to other public officials whose responsibility does include inspecting the installation of these types of elevators. Safety is our business and we'll promote it whenever possible.

"Although inspection of private, residential elevators is outside the scope of our authority, we are happy to provide training and lend our expertise to other public officials whose responsibility does include inspecting the installation of these types of elevators. Safety is our business and we'll promote it whenever possible."

The training will be conducted by Michael Simmons, Assistant Chief Elevator Inspector for the State of Utah, and will be scheduled sometime in the near future at a location yet to be determined. Training will include installation, operation, and inspection of hoistways, machinery spaces, and life safety devices. Simmons will review all tests that should be performed on all mechanical equipment.

For information regarding the elevator inspection process, contact the Division at (801) 530-6850.

Two Utah companies qualify for 2006 SHARP status

By Bob Newman – UOSH Consultant

During recent ceremonies, Commissioner Sherrie Hayashi recognized two Utah companies as qualifying for SHARP status in 2006. Kitco/Wencor, Inc. and Futura Industries have both met the stringent requirements necessary to obtain the prestigious SHARP award and have been recognized not only locally, but by Federal OSHA as well.

The Safety and Health Achievement Recognition Program (SHARP) was developed to recognize small employers who operate an exemplary safety and health management system. Acceptance into SHARP by OSHA is an achievement of status that will distinguish employers from their business peers as a model for worksite safety and health. Upon receiving SHARP recognition, worksites are exempt from program inspections during the period in which the



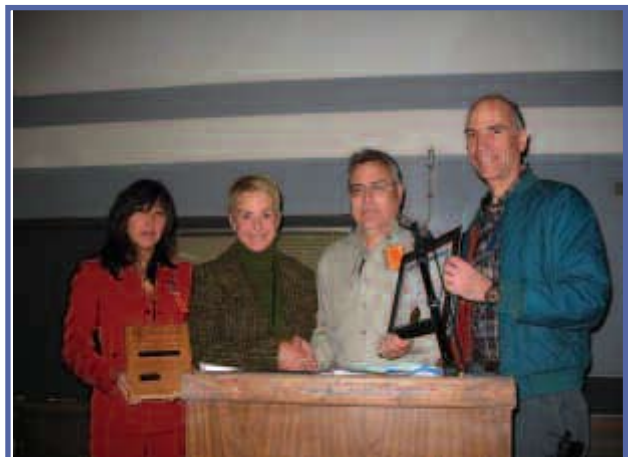
KITCO Presentation - Labor Commissioner Sherrie Hayashi, Bobby Waters - Safety Manager, Brent Wood - CEO and Russell Adamson - President

SHARP certification is valid.

Kitco/Wencor, located in Springville, supplies aircraft manufactured parts for general aviation aircraft and major airlines worldwide. Large quantities of stock parts are inventoried, sorted, and

then shipped to clients.

Futura Industries fabricates extruded metal profiles from their Clearfield location for a variety of industries such as transportation, boating, flooring, tile trim coverings, electronics, and the medical field. Large 80 pound aluminum ingots are heated until pliable and extruded through various dies to meet the



FUTURA Presentation - Labor Commissioner Sherrie Hayashi, Susan Johnson - President, Bob Newman - UOSH, and Don Greenfield - Director of Operations

client's request.

To participate in SHARP, a request must be made in writing, asking for a consultation visit. This visit will assess the effectiveness of the company's Safety and Health Management commitment. A walkthrough of the site will be conducted identifying any hazards, or potential hazards, and the corrective measures which need to be taken by the employer to correct or eliminate the hazard. Through their commitment to safety and health, the employer needs to show a three year reduction in Lost-Workdays and Illnesses rates and Total Recordable Case Rate below the National Average. To find out more about participating in SHARP, contact the UOSH Consultation Program at (801) 530-6901 or visit our website: www.uosh.utah.gov

UALD Investigators earn national status in fair housing training

By Robyn Barkdull – Public Information Officer

“The last week of the training was the hardest week of my life since college, but it was also the best week” is how Joan Carter, Senior Investigator at the Utah Antidiscrimination and Labor Division, summed up the five-week training course she and fellow investigator, Stephanie Carrillo, completed in December, 2006. The two investigators are now part of a distinguished group of knowledgeable and expert civil rights professionals who personify the highest standards in the civil rights fair housing field.



UALD investigators Joan Carter (l) and Stephanie Carrillo (r)

The National Fair Housing Training Academy in Washington, D.C. offers a five-week certification training course for civil rights professionals throughout the U.S. The program is designed to provide fair housing enforcement staff with the knowledge and skills necessary to conduct efficient and timely housing investigations and to be an advocate for fair housing's best methodologies and practices nationwide. It is mandated that investigators from UALD participate in the training as specified by the funding requirements with U.S. Department of Housing and Urban Development (HUD) in order to investigate fair housing complaints throughout the state of Utah.

Housing discrimination in Utah is an ongoing problem. Many times this type of discrimination is applied more subtly than employment discrimination, and many perspective tenants are unaware of their rights. In 2006, the Division investigated 60 claims involving cases where the issue of fair housing was at stake. Because of the complexity of applying the Fair Housing Act, having nationally certified investigators ensures the Division has nationwide, expert allies, access to critical information, and strategies learned to aid in housing discrimination cases.

The five-week training included many diverse courses including Fair Housing Law and Ethics; Critical Thinking and Investigations; the Psychological Impact of Racial Discrimination; Negotiation Skills and Interviewing Techniques; Investigation Review and Application; Writing Cases Using the Title Eight Automated Paperless Office Tracking System (TEAPOTS); and Litigating Fair Housing Cases.

Certification is significant through the impact of more vigorous and consistent enforcement by civil rights authorities. By Carter and Carrillo now joining this prestigious group of civil rights authorities, the Division and most importantly, the State of Utah, will benefit greatly in the expertise acquired through their national status.

There are only three such nationally ranked investigators in the state at this time. Michelle Hutchins, who works for HUD in their Salt Lake City office, has also completed the rigorous course. The certification of Carter and Carrillo will provide a major benefit to the Division and the State in the fight against housing discrimination.

To contact a UALD Employment and Housing Investigator, please call (801) 530-6801.

Appellate Board Decisions

By Alan L. Hennebold, Deputy Commissioner

On November 30, 2006, the Utah Court of Appeals issued three decisions on appeals of decisions issued by the Utah Labor Commissioner or the Labor Commission's Appeals Board. One of the decisions involved a claim of employment discrimination. The other two involved workers' compensation claims.

Carter v. Labor Commission and Sullivan-Schein Dental, Case No. 20050789-CA. The Utah Antidiscrimination Act prohibits retaliation against employees who complain of unlawful discrimination. However, it can be difficult to determine whether an employer's actions against an employee are retaliatory, or are motivated by non-retaliatory reasons. In *Carter*, the Utah Court of Appeals upheld the Labor Commission's determination that Carter was fired for violating company rules—**not** for complaining about discrimination.

In 1992 and 1993, Carter worked at Mountain West Dental under the supervision of two men, Simmons and Brown. Carter then went to work for other dental supply companies, but in 1997, as a result of various mergers and acquisitions, Carter found herself again working with Simmons and Brown at Sullivan-Schein Dental. Carter wrote a letter to company management alleging that, when she had worked for Simmons and Brown before, they had made inappropriate gender-based comments and treated her less favorably than male employees. After receiving Carter's letter, Sullivan-Schein warned Brown and Simmons against any inappropriate conduct, comments, or retaliation against Carter.

At about this same time, Sullivan-Schein established rules that applied to all of its sales representatives,

including Carter. These rules prohibited any sales representative from asking customers to express a preference for that representative, or contacting customers assigned to other sales representatives. Over the next few months, Carter's co-workers accused her of violating these rules on three occasions. After the last of these incidents, Sullivan-Schein fired Carter.



Carter filed a complaint with the Utah Antidiscrimination & Labor Division ("UALD") alleging Sullivan-Schein had fired her in retaliation for having complained about Simmons and Brown. After an informal investigation and then a formal

hearing in which UALD and an administrative law judge concluded Sullivan-Schein had retaliated against Carter, Sullivan-Schein requested review by the Commission's Appeals Board.

The Appeals Board noted that Carter's letter to Sullivan-Schein management, which she claimed had led to the company's retaliation, dealt with events occurring years earlier at a different company.

The two individuals identified in Carter's letter were not in positions of any substantial authority at Sullivan-Schein. Furthermore, when Sullivan-Schein received Carter's letter, it took appropriate action to prevent any future discrimination or retaliation. The Appeals Board found these facts to be inconsistent with the idea that Carter's complaint against Simmons and Brown had motivated Sullivan-Schein to discharge Carter.

The Appeals Board also noted that complaints about Carter's dealings with customers came from co-workers who knew nothing about her earlier letter. Whether or not the co-workers were correct in their complaints against Carter, Sullivan-Schein believed the complaints. The Appeals Board therefore

concluded that Carter was discharged for violating company rules, and not in retaliation for her complaints against Simmons and Brown.

Carter appealed to the Utah Court of Appeals, arguing that the evidence did not support the Appeals Board's decision. The Court of Appeals rejected Carter's argument, observing that the hearing record substantially supported the Appeals Board's conclusions. The Court of Appeals also noted that the Appeals Board is entitled to draw its own conclusions and inferences from the evidence, even if those conclusions and inferences are contrary to the conclusions of the administrative law judge.

Workers Compensation Fund v. Labor Commission et al., Case No. 20060103-CA. Darla Basso worked as a seamstress, first for Koret, then for Rivers West. She began experiencing pain in her neck and arms and filed a claim for occupational disease benefits against both Koret and Rivers West.

After a hearing, a Labor Commission administrative law judge ordered Koret to pay benefits to Basso, but dismissed Basso's claim against Rivers West "with prejudice." Koret and Basso each requested the Commission to review the extent of Koret's liability;

neither Koret nor Basso contested the ALJ's dismissal of Basso's claim against Rivers West. The Commission ordered further evidentiary proceedings on Basso's claim and, as a result, ordered Rivers West to pay benefits to Basso.

On appeal, the Utah Court of Appeals reversed the Commission's order that Rivers West pay benefits. The Court concluded that, because neither Koret nor Basso had appealed the original dismissal of Basso's claim against Rivers West, the Commission lacked jurisdiction to reinstate the claim in subsequent proceedings.

Owen v. Labor Commission, et al. Case No. 2006-0747. Owen filed a claim against Wellington City, her former employer, for either occupational disease or workers' compensation benefits for back pain. In her application for benefits, Owen alleged that her back problems were caused by her work for Wellington City. The Commission's Appeals Board denied Owen's claim on the grounds she had failed to notify her employer of the claim within the time limits established by either the Utah Occupational Disease Act or the Utah Workers' Compensation Act. On appeal, the Utah Court of Appeals summarily affirmed the Appeals Board's decision.

The "Rules" Corner

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.



RULE NUMBER	DESCRIPTION	STATUS
Rule 614-1-4. UOSH	Respiratory Protection Standards augmenting existing standards for respiratory protection. Hexavalent chromium exposure standards. Roll-over protection testing standards.	Public meeting on October 11, 2006. Published December 15, 2006. May become effective January 23, 2007.
R616-2-3 Boiler & Elevator Safety	Adoption of updated national boiler and pressure vessel codes enacted by the American Society of Mechanical Engineers (ASME).	Published January 2, 2007. May become effective February 8, 2007.

LABOR COMMISSION

160 East 300 South, 3rd Floor

PO Box 146600

Salt Lake City, UT 84114-6600

PRSR STD

U.S. Postage

PAID

Salt Lake City, UT 84116

Permit No. 4621

ON-THE-JOB, 1st Quarter 2007, Page 8

Promoting Safety and Fairness

...Continued from page 1

demonstrates the quality in which we serve our constituents.

Efficiency: Creating a culture of open discussion and exchange of ideas, and identifying opportunities for continuous improvement can only be established by engaging the people who do the job on a daily basis.

Financial Accountability: As state employees, we understand we are public servants and have an obligation to make the best use of state and federal funds to carry out our statutory obligations for the public good. Our ability to be accountable and demonstrate our success in meeting quantifiable measures demonstrates in very visible terms our commitment to serving the people of the State of Utah.

The Labor Commission has some of the most dedicated and knowledgeable people in state government. Providing our employees with the support and direction they need to do their jobs through training, effective communication, and most of all by valuing their daily contributions, is the best way the Labor Commission can meet its overall goals and objectives, and serve our employees and the State in the best way possible.

For more information about the Labor Commission, please visit us at our website at www.laborcommission.uthah.gov or contact us at (801) 530-6800.

Request Form☐

Please delete my name from your mailing list.

☐

Please add my name to your mailing list. I would like to receive your quarterly newsletter.

☐

Please correct my name/address on your mailing list. I am currently receiving your quarterly newsletter. (Enclosed incorrect label.)

Name

Company

Address

City

State

Zip Code